

William Lange

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
3 CHARLESTON DIVISION

4 IN RE: DIGITEK PRODUCT LIABILITY LITIGATION

5 WILLIAM E. LANGE, ET AL.,)

6 PLAINTIFFS,)

7 V.) MDL NO. 1968

8 ACTAVIS TOTOWA, LLC, ET AL.,)

9 DEFENDANTS.)

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15 DEPOSITION OF WILLIAM E. LANGE, PRODUCED,
16 SWORN AND EXAMINED ON THE 6TH DAY OF OCTOBER,
17 2009, BETWEEN THE HOURS OF 9:00 A.M. AND 10:20
18 A.M., AT THE OFFICES OF THOMPSON, MILLER &
19 SIMPSON, 600 WEST MAIN STREET, LOUISVILLE,
20 JEFFERSON COUNTY, KENTUCKY, BEFORE LISA MIGLIORE,
21 CERTIFIED COURT REPORTER--KENTUCKY AND NOTARY
22 PUBLIC WITHIN AND FOR THE STATE OF KENTUCKY.

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APPEARANCES

FOR THE PLAINTIFFS:
CARL FRANKOVITCH, ESQ.
MEGHAN JOHNSON CARTER, ESQ.
MOTLEY RICE
28 BRIDGESIDE BOULEVARD
MT. PLEASANT, SOUTH CAROLINA 29464

FOR THE DEFENDANTS:
ERICKA DOWNIE, ESQ.
SHOOK, HARDY & BACON
2555 GRAND BOULEVARD
KANSAS CITY, MISSOURI 64108
APPEARING ON BEHALF OF MYLAN PHARMACEUTICALS INC.,
MYLAN BERTEK PHARMACEUTICALS INC., AND UDL
LABORATORIES

JOHN A. SIMON, ESQ.
TUCKER, ELLIS & WEST
1150 HUNTINGTON BOULEVARD
925 EUCLID AVENUE
CLEVELAND, OHIO 44115
APPEARING ON BEHALF OF ACTAVIS TOTOWA LLC, ACTAVIS
INC., AND ACTAVIS ELIZABETH LLC

JAMES S. ARNOLD, ESQ.
ALLEN GUTHRIE & THOMAS
P.O. BOX 3394
CHARLESTOWN, WEST VIRGINIA 25333
APPEARING ON BEHALF OF THE WEST VIRGINIA
DEFENDANTS

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8 INDEX TO EXHIBITS

9 NONE

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1 Q. Okay.

2 A. Yes.

3 Q. So everything else is correct in the
4 fact sheet other than withdrawing your personal
5 injury claim; is that correct?

6 A. Everything except on the last page, my
7 cardiologist.

8 Q. Okay.

9 A. I have a new cardiologist.

10 Q. Who is your new cardiologist?

11 A. I seen him twice. Dr....

12 Q. He left quite an impression.

13 A. Yeah, he stopped my a-fib. I should
14 know his name. Stidam.

15 Q. Stidam?

16 A. S-T-I-D-A-M.

17 Q. And your previous cardiologist, that was
18 Dr. McMartin; is that correct?

19 A. Yes, ma'am.

20 Q. Okay. All right. Why is it that you
21 decided to file this lawsuit?

22 A. Just -- everything that happened when
23 all this -- when all this happened, the trips back
24 and forth to the pharmacy, a trip to the doctor,
25 just everything that went along with it.

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1 Q. When you say, "when all of this
2 happened," can you be more specific with me?

3 A. When they -- they sent me a letter
4 and -- Kroger did, and they said something about
5 this product had been pulled off the market and I
6 needed to come -- I went in -- I went to Kroger, and
7 there was a young girl at the counter. She didn't
8 know anything about it. She asked the pharmacist.
9 He didn't know about it. I went home.

10 Two or three days later, I get a phone call
11 from Kroger. They said, "Bring your pills in, and
12 we'll trade them out for you. Digitek has been
13 pulled off the market."

14 So I took the pills in. They gave me some new
15 pills. I made an appointment with my cardiologist.
16 I went down to him and talked it over, and just that
17 was about the extent of it.

18 Q. Okay. The letter that you received from
19 Kroger, do you still have that in your possession?

20 A. No, I don't.

21 Q. Do you have any records in your
22 possession regarding your prescription for Digitek?

23 A. No.

24 Q. Do you have any bottles that the
25 prescription came in for Digitek?

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1 Q. Okay.

2 A. I didn't think it was any more than
3 that, and then something about it was about being
4 taken off the market.

5 Q. Okay. Now, in what manner do you
6 believe that you've been injured?

7 A. I don't think I have any injury at all.

8 Q. Okay. We talked about your personal
9 injury.

10 Do you have any economic injury that you
11 believe you've suffered?

12 A. Just -- just gasoline and going to and
13 from and...

14 Q. So that would be the trip to the
15 pharmacy to return your Digitek and receive your new
16 pills and then the trip to your cardiologist?

17 A. A couple of trips to the pharmacy and
18 then to the cardiologist.

19 Q. How many trips to the pharmacy?

20 A. Two.

21 Q. Two?

22 A. I went one time, and they weren't sure
23 and didn't know much about it, and then a couple of
24 days later, I went the second time.

25 Q. Okay. I may have misunderstood. My

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1 Q. What medication were you taking between
2 the time that you received the letter and the time
3 that you went back to the pharmacy the second time?

4 A. Concerning the Digitek?

5 Q. That's right.

6 A. One a day.

7 Q. Okay. So you continued to take it until
8 you went back to the pharmacy the second time?

9 A. Yes, ma'am.

10 Q. Okay. All right. So we've talked about
11 the time spent going back and forth to the pharmacy
12 two times and the trip to the cardiologist.

13 A. Yes.

14 Q. Are there any other economic damages
15 that you believe you suffered?

16 A. No.

17 Q. So, for example, you don't have any lost
18 wage claim; is that correct?

19 A. No.

20 Q. And you don't have any claim for
21 out-of-pocket expenses other than the cost of
22 gasoline to and from the pharmacy?

23 A. And the prescription.

24 Q. Which prescription?

25 A. The digoxin or the Digitek, whatever I

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1 was taking.

2 Q. Okay.

3 A. And I had a co-pay on that stuff.

4 Q. Okay. How much was your co-pay?

5 A. I think it was a generic, like five
6 bucks.

7 Q. And let's be clear. Was that for the
8 Digitek, or was that for the new prescription or
9 both?

10 A. I think both were generic.

11 Q. So your co-pay for a 90-day supply was
12 \$5?

13 A. For 90 days, it was \$10.

14 Q. For 90 days, it was \$10.

15 And you had already taken approximately 60
16 tablets out of the 90-day supply and had 30 tablets
17 left?

18 A. Yes.

19 Q. Do you recall, when you received the
20 letter from Kroger, if there was any information
21 regarding returning the product and receiving a
22 refund?

23 A. I'm not sure. I'm not sure about the
24 letter. I thought -- I thought it possibly said the
25 same thing that -- that they told me on the phone,

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1 "Bring it in and we will replace it with the new
2 drug."

3 Q. If the letter did state that you were
4 eligible for a refund, would you have taken
5 advantage of that?

6 A. A refund or a replacement.

7 Q. Refund for the Digitek that you had not
8 taken, your remaining prescription?

9 A. Sure, I would have taken a refund
10 because I would have had to apply it to the new
11 prescription.

12 Q. Now, do you understand that you are a
13 class action representative in this litigation?

14 A. Yes.

15 Q. What does that mean?

16 A. I feel like it means that I represent a
17 group of people who have the same feelings as I do.

18 Q. And why was it you decided that you
19 would be a class representative rather than just a
20 member of the class?

21 A. I sort of felt like somebody had to do
22 it, and I sort of volunteered.

23 Q. Okay. Have you spoken to any other
24 members of the class --

25 A. No.

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1 A. I have no idea.

2 Q. You have no idea what their injuries
3 are -- their alleged injuries?

4 A. No.

5 MS. DOWNIE: Why don't we take a break.

6 (A BRIEF RECESS WAS TAKEN.)

7 BY MS. DOWNIE:

8 Q. How far do you live from the pharmacy --
9 Kroger pharmacy? How far of a distance is that?

10 A. About a mile.

11 Q. Okay. So what is your home -- you told
12 us what your home address was.

13 A. Yes.

14 Q. And is that the same address that you
15 were at at the time that the recall occurred?

16 A. Yes.

17 Q. So it was about a mile distance, two
18 miles round trip that you drove?

19 A. Yes.

20 Q. Okay. We've talked about this a little
21 bit before, and I just want to make sure that I'm
22 clear on your testimony.

23 Earlier you testified that you had decided not
24 to pursue your personal injury claims. I just want
25 to make sure that I'm understanding exactly why you

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1 Q. When you made that switch, did you have
2 a -- did you notice anything different in your
3 condition or how you were feeling?

4 A. No.

5 Q. Okay. And the Digitek that you took for
6 the seven to eight years, was that effective in
7 treating your condition as far as you knew?

8 A. I really don't know. I'm not a doctor,
9 so I -- I did well, I guess.

10 Q. Okay. Bear with me here.

11 A. Sure.

12 Q. I'm going to be skipping around a little
13 bit.

14 What did the Digitek look like; do you recall?

15 A. Just a very small, flat white pill.

16 Q. Do you recall if it had any imprinting
17 on it, any letters on it?

18 A. No.

19 Q. Do you recall what the digoxin looked
20 like?

21 A. Very similar.

22 Q. And, again, do you recall if there was
23 any printing on that?

24 A. No.

25 Q. Do you recall if either one of those

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1 resulted from your use of Digitek?" And I guess I
2 could have put "none" --

3 Q. Uh-huh.

4 A. -- which would maybe have been more
5 appropriate, but I just wrote that down.

6 Q. Would "none" have been more appropriate
7 in your case?

8 A. "None" would have been more appropriate,
9 yes, ma'am.

10 Q. Okay. And you've subsequently talked to
11 your attorneys; is that correct?

12 A. Yes.

13 Q. So you talked to Dr. McMartin, and you
14 testified that you talked to Mr. Lange as well?

15 A. Yes.

16 MR. FRANKOVITCH: And to me.

17 BY MS. DOWNIE:

18 Q. And to Mr. Frankovitch?

19 A. Yeah.

20 Q. And is it correct that you've never been
21 told that you had suffered from digoxin toxicity or
22 elevated digoxin levels?

23 A. I have not.

24 Q. What insurer did you have during the
25 time period that you were filling your prescriptions

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1 STATE OF KENTUCKY)
2 COUNTY OF JEFFERSON)
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4)SS: ERRATA
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I HAVE READ THE FOREGOING PAGES, AND THE
STATEMENTS CONTAINED THEREIN (SUBJECT TO
CORRECTIONS, ADDITIONS, AND DELETIONS CONTAINED IN
THE ADDENDUM ANNEXED HERETO, IF ANY), AND THEY ARE
TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WILLIAM E. LANGE

14
15 SUBSCRIBED AND SWORN BEFORE ME THIS DAY BY
16 , THIS DAY OF 2009.
17 MY COMMISSION EXPIRES:

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25
NOTARY PUBLIC

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1 COMMONWEALTH OF KENTUCKY)
2)
2 COUNTY OF JEFFERSON)

3 I, LISA M. MIGLIORE, CCR-KY, A NOTARY PUBLIC,
4 WITHIN AND FOR THE STATE AT LARGE, DO HEREBY CERTIFY
5 THAT THE FOREGOING DEPOSITION OF

6 WILLIAM E. LANGE

7 WAS TAKEN BEFORE ME AT THE TIME AND PLACE AND FOR
8 THE PURPOSE IN THE CAPTION STATED; THAT THE WITNESS
9 WAS FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE
10 TRUTH, AND NOTHING BUT THE TRUTH; THAT THE
11 DEPOSITION WAS TAKEN BEFORE ME STENOGRAPHICALLY AND
12 AFTERWARDS TRANSCRIBED UNDER MY DIRECTION; THAT THE
13 FOREGOING IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF
14 THE SAID DEPOSITION SO GIVEN; THAT THERE WAS A
15 REQUEST THAT THE WITNESS READ AND SIGN THE
16 DEPOSITION; THAT THE APPEARANCES WERE AS STATED IN
17 THE CAPTION.

18 I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
19 NOR OF KIN TO ANY OF THE PARTIES TO THIS ACTION, AND
20 AM IN NO WAY INTERESTED IN THE OUTCOME OF SAID
21 ACTION.

22 WITNESS MY SIGNATURE THIS 11TH DAY OF OCTOBER,
23 2009. MY COMMISSION EXPIRES NOVEMBER 10, 2009.

24

25 NOTARY PUBLIC
STATE AT LARGE, KENTUCKY

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1 STATE OF KENTUCKY)
2 COUNTY OF JEFFERSON) SS: ERRATA
3

4 I HAVE READ THE FOREGOING PAGES, AND THE
5 STATEMENTS CONTAINED THEREIN (SUBJECT TO
6 CORRECTIONS, ADDITIONS, AND DELETIONS CONTAINED IN
7 THE ADDENDUM ANNEXED HERETO, IF ANY), AND THEY ARE
8 TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.
9

12 
13 WILLIAM E. LANGE

15 SUBSCRIBED AND SWORN BEFORE ME THIS DAY BY
16 William Lange <sup>22nd, THIS 22nd DAY OF October 2009.
17 MY COMMISSION EXPIRES:
18 8-9-2010</sup>

19 
20 NOTARY PUBLIC